



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF:

Harold Chapman,
an individual

Proceeding Under Section 106(a)
of the Comprehensive Environmental
Response, Compensation, and
Liability Act of 1980,
42 U.S.C. § 9606(a).

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)
)
) U.S. EPA Docket No. 9-2004-0027
) UNILATERAL ADMINISTRATIVE
) ORDER FOR THE PERFORMANCE
) OF A REMOVAL ACTION
)

I. AUTHORITY

This Unilateral Administrative Order ("Order") is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9606(a), as amended by the Superfund Amendments and Reauthorization Act of 1986, and the Small Business Liability Relief and Brownfields Revitalization Act of 2002 ("CERCLA"). The President delegated this authority to the Administrator of the United States Environmental Protection Agency ("EPA" or "Agency") by Executive Order 12580, January 23, 1987, 52 Fed. Reg. 2923, and further delegated it to the Assistant Administrator for Solid Waste and Emergency Response and the Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B. This authority has been duly redelegated to the Branch Chief, Superfund Division, EPA Region 9 ("Branch Chief"), by delegations dated September 29, 1997, and November 16, 2001.

II. PARTIES BOUND

1. This Order shall apply to and be binding on the following: Harold Chapman ("Chapman" or "Respondent"), in his individual and personal capacity. This Order shall be binding on Chapman and his agents, successors and assigns. No change in ownership or operational status will alter Respondent's obligations under this Order. Notwithstanding the terms of any contract or agreement, Respondent is responsible for compliance with this Order and for ensuring that his employees, contractors, and agents comply with this Order. Respondent shall provide a copy of this Order to all contractors, subcontractors, and consultants that are retained by him to perform the work required by this Order within three (3) days after the Effective Date of this Order or within three (3) days of retaining their services, whichever is later.

2. Respondent may not convey any title, easement, or other interest he may have, in any property comprising the Site, as the term "Site" is defined below, without a provision permitting the continuous implementation of the provisions of this Order. If Respondent wishes to transfer any title, easement, or other interest that he may have in any property comprising the Site, Respondent shall provide a copy of this Order to any subsequent owner(s) or successor(s) before any ownership rights are transferred. In such case, Respondent shall advise EPA as soon as practical prior to any anticipated transfer of interest.

III. DEFINITIONS

3. Unless otherwise expressly provided herein, the terms used in this Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever the terms listed below are used in this Order, or in the exhibits attached hereto and incorporated hereunder, the following definitions shall apply:

“Days” shall mean consecutive calendar days unless expressly stated otherwise.

“Working days” shall mean consecutive calendar days other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Order where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 and by the Small Business Liability Relief and Brownfields Revitalization Act of 2002, 42 U.S.C. § 9601 et seq.

“Unilateral Order” or “Order” shall mean this Unilateral Administrative Order, EPA docket number 9-2004-0027, and all exhibits attached hereto. In the event of a conflict between this Order and any exhibit, this Order shall control.

“EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300.

“Paragraph” shall mean a portion of this Order identified by an Arabic numeral.

“Response Action” shall be those specific work items Respondent is required to perform at the Site pursuant to this Order, as set forth in Section IX of this Order.

“Respondent” shall mean Chapman.

“Section” shall mean a portion of this Order identified by a Roman numeral, unless otherwise stated.

"Site" shall mean the facility located at 2040 Williams Street, in San Leandro, in Alameda County, California, in addition to any associated personal property, such as motor vehicles, trailers, containers, and other real property at which hazardous substances exist from the operation of the facility.

"State" shall mean the state of California, and all of its political subdivisions, including the Department of Toxic Substances Control ("DTSC").

"United States" shall mean the United States of America.

IV. FINDINGS OF FACT

4. Site description

The Site is a large commercial warehouse complex of multiple one and two-story structures that include a primary structure containing executive offices and converted living quarters among several hundred thousand square feet of warehouse space (the "warehouse facility").

Outside of the warehouse facility but within the Site complex is a number of tractor trailers, assorted large process machinery, a number large shipping containers, a mobile laboratory, numerous out-of-service storage tanks, various mobile homes, and many vehicles.

The Site is bounded to the north by a retail shopping center, and to the south, west and east by manufacturing or commercial operations and other light industry. There is a non-operational gate and an unmanned security house located at the southeast corner of the Site. Public access to the Site is unrestricted.

5. Site ownership and operation

Chapman is the owner and operator of the Site. Chapman purchases items in lots at public and private auctions and stores them at the Site with the stated intent to resell them later.

He maintains two on-line retail contacts, "lottastuff.com" and "almostscrap.com." Chapman has accumulated at the Site off-specification paints, solvents, detergents, chemicals, oils, greases, acids, bases and other toxic and hazardous substances that are stored in various locations throughout the Site.

6. Release Characteristics

Within the Site are: containers labeled "corrosive" that may be leaking into a floor drain in the northwest corner of the main warehouse facility; improperly stored compressed gas cylinders; containers in deteriorating condition, variously labeled "flammable," "corrosive" and "toxic," improperly stored within close proximity; other deteriorating containers in close proximity exhibiting corrosion, cracks, rust, blisters and bulging to suggest uncontrolled chemical reaction or degradation; and assorted, improperly stored bottles containing mercury. More specific detail of materials at the Site and release conditions are stated in the Memorandum *Request for a Time-Critical Removal Action at the Lottastuff Site* (the "Action Memorandum"), included with this Order as Appendix A.

The materials EPA observed identified at the Site and referenced in the Action Memorandum are "hazardous substances," as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), by meeting requirements set forth respectively in 40 C.F.R. §§ 261.21(a)(1), 261.22(a)(1), and 261.24.

Respondent continues to operate the Site in the condition described above. Threats to public health or the environment stem from the potential for deteriorating materials in close proximity at the Site to be exposed to the persons within the Site, or to ignite or create caustic or toxic fumes. Continued deterioration creates an imminent and substantial threat of a catastrophic release of hazardous substances, or migration of hazardous substances from the Site.

The administrative record supporting this action is available for review at the EPA, Region 9 offices located at 75 Hawthorne Street, San Francisco, California.

V. CONCLUSIONS OF LAW

7. The Site is a "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

8. Chapman is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

9. Chapman is the current owner and operator of the Site, and is "liable" within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a)(1), and is subject to this Order under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

10. Toxic, corrosive and flammable materials identified in the Action Memorandum are "hazardous substances" as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). Hazardous substances disposed, leaking or threatening to leak from the Site constitute a "release," as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

11. The actual or threatened release of hazardous substances from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment, within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

VI. DETERMINATIONS

Based on the Findings of Fact and the Conclusions of Law stated herein, the Branch Chief has made the following determinations:

12. That an actual or threatened release of hazardous substances from the Site presents an imminent and substantial endangerment to the public health or welfare or the

environment.

13. That conditions at the Site constitute a threat to public health or welfare or the environment based on consideration of the factors stated in the NCP at 40 C.F.R. § 300.415(b), and that the actions required by this Order are necessary to protect the public health or welfare or the environment.

14. That the actions required by this Order, if properly performed, will be consistent with the NCP, and are appropriate to protect the public health or welfare or the environment.

VII. NOTICE TO THE STATE

15. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), EPA has notified the State of the issuance of this Order by providing a copy of this Order.

VIII. EFFECTIVE DATE

16. This Order is deemed effective on receipt (the "Effective Date"), unless a conference is requested as provided herein. If such a conference is requested, this Order shall be effective the second (2nd) day following the day of such conference unless modified in writing by EPA.

IX. ORDER

17. Based on the Findings of Fact, Conclusions of Law, and Determinations, EPA hereby orders Respondent to perform the specific work set forth below under the direction of the EPA On Scene Coordinator ("OSC"), as designated in Section XIV, and to comply with all requirements of this Order until EPA provides notice that the Response Action is complete.

A. Work to be Performed

18. Respondent shall immediately restrict access to the Site and, for the duration of the response action required by this Order, Respondent shall not allow any materials, equipment,

or any other personal property to be removed from or brought into the warehouse facility at the Site without prior EPA approval.

19. Within fifteen (15) days after the Effective Date of this Order, Respondent shall submit to EPA for approval, a Work Plan for the removal of hazardous substances from the Site. The Work Plan shall provide a concise description of the activities to be conducted to comply with the requirements of this Order, and shall include a proposed schedule for implementing and completing such activities. The Work Plan shall comply with the guidelines for preparation provided in Paragraph 21, below, and at a minimum, shall require the Respondent to perform and complete the following removal activities within twenty-one (21) days after EPA approves the Work Plan pursuant to Paragraphs 21 and 24 of this Order.

- A) For all areas of the Site subject to the control of Respondent and not actively leased and used by another party, sample and characterize all containerized materials outside of the warehouse facility (including tanks and trailers) and within the warehouse facility, except those clearly contained in original packaging and clearly labeled as to their contents. Characterization shall include an assessment of whether any hazardous substance is salable product. For each hazardous substance that would be designated salable product, the assessment shall include a statement of the use of the material, the useful life of the material, the value of the material and anticipated consumers of the material;
- B) Perform air monitoring and sampling in accordance with Occupational Safety and Health Administration ("OSHA") regulations during all phases of the removal action, especially when there is a potential for airborne releases of toxic air contaminants. Use operational controls such as dust containment or suppression

to abate fugitive dust emissions;

- C) Segregate all hazardous substances to ensure incompatible substances pose no threat of violent reaction, fire, or explosion; remove non-hazardous chemicals to the appropriate solid waste disposal facility, recycling facility or return to distributor/manufacturer. All hazardous substances that are salable product must be segregated and stored in a proper manner consistent with reasonable commercial practices;
- D) Properly transport and dispose in accordance with all applicable or appropriate regulations, all hazardous substances at the Site or, where feasible, implement alternative treatment or reuse/recycling options. Each transfer of hazardous substances, pollutants or contaminants off-Site must be consistent with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and the EPA "Revised Procedures for Implementing off-Site Response Actions," (OSWER Directive 98343.11, November 13, 1987;
- E) Assess building structures for contamination and remove any remaining grossly contaminated equipment, structures, and debris for proper disposal or other disposition; and
- F) Provide EPA with copies of all documentation related to off-Site disposal or other disposition of wastes including, but not limited to, manifests, waste profiles and analytical data and disposal costs.

20. Within three (3) days of the Effective Date of this Order, the Respondent shall provide EPA with documentation that adequately demonstrates his financial ability to complete the work to be performed pursuant to this Order. Examples of adequate financial documentation

that EPA may accept include, but are not limited to, a signed contract or guarantee on the part of the Respondent's contractor that it will complete the work to be performed, a letter of credit from a financial institution, or an escrow account for the value of the work to be performed.

21. The Work Plan required in Paragraph 19 shall be reviewed by EPA, which may approve, disapprove, require revisions, or modify the Work Plan. Respondent may bifurcate the Work Plan as two partial responses, one addressing the contents of the warehouse facility, and one addressing areas outside of the warehouse facility. Once approved, the Work Plan shall be deemed to be incorporated into and made a fully enforceable part of this Order. The Respondent shall implement the Work Plan as finally approved by the EPA. In addition to the requirements listed in Paragraph 19, the Work Plan shall include:

A) A Health & Safety Plan, prepared in accordance with EPA's Superfund Standard Operating Safety Guide, dated June 1992, which complies with all current OSHA regulations applicable to Hazardous Waste Operations and Emergency Response, 29 C.F.R. Part 1910. Respondent shall incorporate all changes to the Health & Safety Plan recommended by EPA and implement the Health & Safety Plan throughout the performance of the removal action; and

B) A Quality Assurance Project Plan ("QAPP") that is consistent with EPA Guidance for Quality Assurance Project Plans (EPA QA/G-5); Preparation of a U.S. EPA Region 9 Field Sample Plan for EPA-Lead Superfund Projects (Document Control No.: 9QA-05-93); and Guidance for the Data Quality Objectives Process (EPA QA/G-4).

22. Respondent shall provide EPA with a written report on completion of the transportation of hazardous substances or wastes for disposal or recycling. This report should contain a summary of the activities to comply with this Order. Within fifteen (15) days after

completing the Response Action, Respondent shall provide EPA with this final summary report, which also shall include all invoices submitted by contractors (which shall identify specific work performed), and copies of all analytical data generated during the response action.

23. All documents, including technical reports, and other correspondence to be submitted by the Respondent pursuant to this Order, shall be sent by over-night mail to the following addressees or to such other addressees as EPA hereafter may designate in writing, and shall be deemed submitted on the date received by EPA.

Janet Yocum, Federal On-Scene Coordinator
US Environmental Protection Agency
EPA, Region 9 (SFD-9)
75 Hawthorne Street
San Francisco, CA 94105

Respondents shall submit two (2) copies of each document to EPA.

24. EPA shall review, comment, and approve or disapprove each plan, report, or other deliverable submitted by Respondent. All EPA comments on draft deliverables shall be incorporated by the Respondent. EPA shall notify the Respondent in writing of EPA's approval or disapproval of a final deliverable. In the event of any disapproval, EPA shall specify the reasons for such disapproval, EPA's required modifications, and a time frame for submission of the revised report, document, or deliverable. If the modified report, document or deliverable is again disapproved by EPA, EPA first shall notify the Respondent of its disapproval of the resubmitted report, document, or deliverable, and then may draft its own report, document or deliverable and incorporate it as part of this Order, may seek penalties from the Respondent for failing to comply with this Order, and may conduct the remaining work required by this Order and seek to recover costs from Respondent.

25. For purposes of this Order, EPA's authorized representatives shall include, but not

be limited to, consultants and contractors hired by EPA to oversee the activities required by this Order.

B. Selection of Contractor(s) and Subcontractor(s)

26. All work performed by or on behalf of Respondent pursuant to this Order shall be performed by qualified individuals or contractors with expertise in hazardous waste site investigation or remediation, unless agreed otherwise by EPA. Respondent shall, within three (3) days after the Effective Date of this Order, notify EPA in writing of the name, title and qualifications of the individual(s) who will be responsible for carrying out the terms of this Order, and the name(s) of any contractor(s) or subcontractor(s). The qualifications of the persons, contractors, and subcontractors undertaking the work for Respondent shall be subject to EPA review and approval.

27. If EPA disapproves of any person's or contractor's technical or work-experience qualifications, EPA will notify the Respondent in writing. Respondent shall, within five (5) working days of Respondent's receipt of EPA's written notice, notify EPA of the identity and qualifications of the replacement(s). Should EPA disapprove of the proposed replacement(s), Respondent shall be deemed to have failed to comply with the Order.

28. Respondent may propose to change the individual(s), contractor(s), or subcontractor(s) retained to direct and supervise the work required by this Order. If Respondent wishes to propose such a change, Respondent shall notify EPA in writing of the name, title, and qualifications of the proposed individual(s), proposed contractor(s), or proposed subcontractor(s), and such individual(s), contractor(s) or subcontractor(s) shall be subject to approval by EPA in accordance with the terms of Paragraphs 26 and 27, above. The naming of any replacement(s) by Respondent shall not extend any deadlines required by this Order nor relieve the Respondent of

any of his obligations to perform the work required by this Order.

29. Respondent will notify EPA of the respective field activities at least twenty-four (24) hours before initiating them so that EPA may adequately schedule oversight tasks.

30. Respondent shall submit to EPA a certification that Respondent or his contractor(s) and subcontractor(s) have adequate insurance coverage or other ability, subject to approval of EPA, to compensate for liabilities for injuries or damages to persons or property that may result from the activities to be conducted by or on behalf of Respondent pursuant to this Order. Adequate insurance shall include comprehensive general liability insurance and automobile insurance with limits of one million dollars, combined single limit. If the Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then the Respondent need provide only that portion of the insurance described above that is not maintained by such contractor or subcontractor. Respondent shall ensure that such insurance or indemnification is maintained for the duration of performance of the work required by this Order. Respondent shall ensure that the United States is named as an additional insured on any such insurance policies.

C. General Provisions:

31. All work required by this Order shall be conducted in accordance with: CERCLA; the NCP; EPA Region 9 "Guidance for Preparing Quality Assurance Project Plans for Superfund Remedial Projects" (EPA, November 1992); any final amended or superseding versions of such documents provided by EPA; other applicable EPA guidance documents; any Work Plan or individual components approved pursuant to Paragraph 21 of this Order; and any report, document or deliverable prepared by EPA because Respondent failed to comply with this Order.

32. All plans, schedules, and other reports that require EPA's approval and are required to be submitted by the Respondent pursuant to this Order shall, after approval by EPA, be incorporated into and enforceable under this Order.

33. EPA will oversee Respondent's activities as specified in Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1). Respondent will support EPA's initiation and implementation of activities needed to carry out its oversight responsibilities. Respondent also shall cooperate and coordinate the performance of all work required to be performed under this Order with all other work being performed at the Site, including work performed by EPA, the State, or any other party performing work at the Site with the approval of EPA.

34. Respondent shall undertake all actions required by this Order in accordance with the requirements of all applicable local, state, and federal laws and regulations unless an exemption from such requirements is specifically provided under CERCLA or unless the Respondent obtains a variance or exemption from the appropriate governmental authority.

X. NOTICE OF INTENT TO COMPLY

35. Respondent shall, within two (2) working days of the Effective Date of this Order, provide written notice to EPA of Respondent's irrevocable intent to comply with this Order. Failure to respond, or failure to agree to comply with this Order, shall be deemed a refusal to comply with this Order.

XI. OPPORTUNITY TO CONFER

36. Respondent may, within one (1) day of receipt of this Order, request a conference with the Section Chief of the Emergency Response Section in the Response, Planning and Assessment Branch in the EPA Region 9 Superfund Division, or whomever the Section Chief may designate. If requested, the conference shall occur within three (3) days of the request,

unless extended by mutual agreement of the Parties, at EPA's Regional Office, 75 Hawthorne Street, San Francisco, California.

37. At any conference held pursuant to Respondent's request, the Respondent may appear in person, or be represented by an attorney or other representative. If Respondent desires such a conference, Respondent shall contact Andrew Helmlinger, EPA Attorney Advisor, at (415) 972-3904.

38. The purpose and scope of any such conference held pursuant to this Order shall be limited to issues involving the implementation of the Response Action required by this Order and the extent to which Respondent intends to comply with this Order. If such a conference is held, the Respondent may present any evidence, arguments or comments regarding this Order, its applicability, any factual determinations on which the Order is based, the appropriateness of any action that the Respondent is ordered to take, or any other relevant and material issue. Any such evidence, arguments or comments should be reduced to writing and submitted to EPA within three (3) days following the conference. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondent a right to seek review of this Order, or to seek resolution of potential liability, and no official record of the conference will be made. If no conference is requested, any such evidence, arguments or comments must be submitted in writing within three (3) days following the Effective Date of this Order. Any such writing should be directed to Andrew Helmlinger, at the following address:

Environmental Protection Agency
75 Hawthorne Street, ORC-3
San Francisco, CA 94105

39. Respondent is hereby placed on notice that EPA will take any action that may be necessary in the opinion of EPA for the protection of public health and welfare and the

environment, and Respondent may be liable for the costs of those actions under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

XII. ENDANGERMENT AND EMERGENCY RESPONSE

40. In the event of any action or occurrence during the performance of the work that causes or threatens to cause a release of a hazardous substance or that may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action(s) to prevent, abate, or minimize the threat, and shall immediately notify EPA's primary OSC, or, if the primary OSC is unavailable, EPA's alternate OSC, as designated below in Paragraph 46. If neither of these persons is available, Respondent shall notify the EPA Emergency Response Unit, Region 9, by calling (415) 947-4400. Respondent shall take such action(s) in consultation with EPA's OSC and in accordance with all applicable provisions of this Order, including but not limited to the approved Health & Safety Plan.

41. Nothing in the preceding Paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances at or from the Site.

XIII. MODIFICATION OF WORK REQUIRED

42. In the event of unanticipated or changed circumstances at the Site, Respondent shall notify the EPA OSC by telephone within twenty-four (24) hours of discovery of the unanticipated or changed circumstances. This verbal notification shall be followed by written notification postmarked no later than within three (3) days of discovery of the unanticipated or changed circumstances.

43. The Branch Chief may determine that in addition to tasks addressed herein,

additional work may be required to address the unanticipated or changed circumstances referred to in Paragraphs 40 and 42. Where consistent with Section 106(a) of CERCLA, the Branch Chief may direct, as an amendment to this Order, that Respondent perform these tasks in addition to those required herein. Respondent shall implement the additional tasks that the Branch Chief identifies. The additional work shall be completed according to the standards, specifications, and schedules set forth by the Branch Chief in any modifications to this Order.

XIV. DESIGNATED PROJECT MANAGERS

44. EPA designates Janet Yocum, an employee of EPA Region 9, as its primary OSC and designated representative at the Site, who shall have the authorities, duties, and responsibilities vested in the OSC by the NCP. This includes, but is not limited to, the authority to halt, modify, conduct, or direct any tasks required by this Order or undertake the Response Action (or portions of the Response Action) when conditions at the Site present or may present a threat to public health or welfare or the environment as set forth in the NCP. Within three (3) days of the Effective Date of this Order, Respondent shall designate a Project Coordinator who shall be responsible for overseeing Respondent's implementation of this Order. To the maximum extent possible, all oral communications between Respondent and EPA concerning the activities performed pursuant to this Order shall be directed through EPA's OSC and Respondent's Project Coordinator. All documents, including progress and technical reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be delivered in accordance with Paragraph 23, above.

45. EPA and Respondent may change their respective OSC and Project Coordinator. Notification of such a change shall be made by notifying the other party in writing at least five (5) days prior to the change, except in the case of an emergency, in which case notification shall

be made orally followed by written notification as soon as possible.

46. Consistent with the provisions of this Order, the EPA designates Pete Guria as an alternate OSC, in the event Janet Yocum is not present at the Site or is otherwise unavailable. During such times, Pete Guria shall have the authority vested in the OSC by the NCP, as set forth in Paragraph 44 above.

47. The absence of the EPA OSC from the Site shall not be cause for the stoppage of work. Nothing in this Order shall limit the authority of the EPA OSC under federal law.

XV. SITE ACCESS

48. Respondent shall permit EPA and its authorized representatives, including its contractors and the State, to have access at all times to the Site to monitor any activity conducted pursuant to this Order and to conduct such tests or investigations as EPA deems necessary. Nothing in this Order shall be deemed a limit on EPA's authority under federal law to gain access to the Site.

49. To the extent that Respondent requires access to property other than property that he owns to carry out the terms of this Order, Respondent shall, within three (3) days of the Effective Date of this Order, obtain access for: EPA, its contractors, oversight officials, or other authorized representatives; state oversight officials or contractors; and Respondent and his authorized representatives. If Respondent fails to gain access within three (3) days, he shall continue to use best efforts to obtain access until access is granted. For purposes of this Paragraph, "best efforts" include, but are not limited to, the payment of money as consideration for access. If access is not provided within the time referenced above, EPA may obtain access under Sections 104(e) or 106(a) of CERCLA and recover any costs incurred pursuant to Section XVI of this Order.

XVI. REIMBURSEMENT OF OVERSIGHT COSTS

50. Respondent shall reimburse EPA, on written demand, for all response costs incurred by the United States in overseeing Respondent's implementation of the requirements of this Order, unless otherwise exempted from this requirement by federal law. EPA may submit to Respondent on a periodic basis a bill for all response costs incurred by the United States with respect to this Order. Respondent shall, within thirty (30) days of receipt of the bill, remit by cashier's or certified check for the amount of those costs made payable to the "Hazardous Substance Superfund," to the following address:

EPA - Cincinnati Accounting Operations
P.O. Box 371099M
Pittsburgh, PA 15251

Attention: Region 9 Superfund Site Collections Officer

Respondent shall send a cover letter with any check and the letter shall identify the Lottastuff Site by name and make reference to this Order, including the EPA docket number stated above. Respondent shall send notification of any amount paid, including a photocopy of the check, simultaneously to the EPA OSC.

51. Interest at the rate established under Section 107(a) of CERCLA shall begin to accrue on the unpaid balance from the due date of the original demand notwithstanding any dispute or objection to any portion of the costs.

XVII. DELAY IN PERFORMANCE

52. Any delay in the performance of any requirement of this Order that, in the EPA's sole judgment and discretion, is not properly justified by Respondent under the terms of this Section shall be considered a violation of this Order. Any delay in performance of any requirement of this Order shall not affect any other obligation of Respondent under the terms and

conditions of this Order.

53. Respondent shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to EPA's primary OSC within twenty-four (24) hours after Respondent first knew or should have known that a delay might occur. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Within three (3) days after notifying EPA by telephone, Respondent shall provide written notification fully describing the nature of the delay, any justification for delay, any reason why the Respondent should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the delay. Increased costs or expenses associated with implementation of the activities called for in this Order are not justifications for any delay in performance.

54. If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may, prior to the expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay. The submission of an extension request shall not itself affect or extend the time to perform any of Respondent's obligations under this Order.

55. If EPA determines that good cause exists for an extension of time, it may grant a request made by Respondent pursuant to Paragraph 54 above, and specify in writing to the Respondent the new schedule for completion of the activity or submission of the document for which the extension was requested.

XVIII. RECORD PRESERVATION

56. Respondent shall maintain, during the pendency of this Order, and for a minimum

of five (5) years after EPA provides notice to Respondent that the work has been completed, a depository of the records and documents required to be prepared under this Order. In addition, Respondent shall retain copies of the most recent version of all documents that relate to hazardous substances at the Site and that are in his possession or in the possession of his employees, agents, contractors, or attorneys. After this five-year period, Respondent shall notify EPA at least thirty (30) days before the documents are scheduled to be destroyed. If EPA so requests, Respondent shall provide these documents to EPA.

XIX. ENFORCEMENT AND RESERVATIONS

57. EPA reserves the right to bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order or otherwise incurred at the Site and not reimbursed by Respondent. This reservation shall include but not be limited to past costs, direct costs, indirect costs, the costs of oversight, the costs of compiling the cost documentation to support oversight costs, as well as accrued interest as provided in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

58. Notwithstanding any other provision of this Order, at any time during the Response Action, EPA may perform its own studies, complete the Response Action (or any portion of the Response Action) and seek reimbursement from Respondent for its costs, or seek any other appropriate relief.

59. Nothing in this Order shall preclude EPA from taking any additional enforcement action, including modification of this Order or issuance of additional Orders, or additional remedial or removal actions as EPA may deem necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. § 9607(a), *et seq.*, or any other applicable law. Respondent may be liable under CERCLA Section 107(a) for the costs of

any such additional actions.

60. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, the Resource Conservation and Recovery Act, or any other applicable statutes or regulations.

61. Notwithstanding compliance with the terms of this Order, including the completion of the EPA-approved Response Action, Respondent is not released from liability, if any, for any enforcement actions beyond the terms of this Order taken by EPA.

62. EPA reserves the right to take any enforcement action pursuant to CERCLA or any other legal authority, including the right to seek injunctive relief, monetary penalties, reimbursement of response costs, and punitive damages for any violation of law or this Order.

63. EPA expressly reserves all rights and defenses that it may have, including the EPA's right both to disapprove of work performed by Respondent and to request the Respondent to perform tasks in addition to those detailed in Section IX of this Order.

64. This Order does not release Respondent from any claim, cause of action or demand in law or equity, including, but not limited to, any claim, cause of action, or demand that lawfully may be asserted by representatives of the United States or the State.

65. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondent will be construed as relieving Respondent of his obligation to obtain such formal approval as may be required by this Order.

XX. SEVERABILITY

66. If any provision or authority of this Order or the application of this Order to any circumstance is held by a court to be invalid, the application of such provision to other

circumstances and the remainder of this Order shall not be affected thereby, and the remainder of this Order shall remain in force.

XXI. DISCLAIMER

67. The United States, by issuance of this Order, assumes no liability for any injuries or damages to persons or property resulting from acts or omissions by Respondent, or his employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order. Neither EPA nor the United States shall be held as a party to any contract entered into by Respondent, or his employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order. This Order does not constitute a pre-authorization of funds under section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

XXII. PENALTIES FOR NONCOMPLIANCE

68. Respondent is advised pursuant to Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), that violation of this Order or subsequent failure or refusal to comply with this Order, or any portion thereof, may subject Respondent to a civil penalty of up to \$32,500 per day for each day in which such violation occurs, or such failure to comply continues. Failure to comply with this Order, or any portion thereof, also may subject Respondent to liability for punitive damages in an amount three times the amount of any cost incurred by the government as a result of the failure of Respondent to take proper action, pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3).

XXIII. TERMINATION AND SATISFACTION

69. The provisions of this Order shall be deemed satisfied on Respondent's receipt of written notice from EPA that Respondent has demonstrated to the satisfaction of EPA that all of

the terms of this Order, including any additional tasks that EPA has determined to be necessary, have been completed.

Unilateral Administrative Order 9-2004-0027

IT IS SO ORDERED:

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

By: _____



Date: _____

19 July 2004

Daniel A. Meer
Branch Chief, Response, Planning and Assessment Branch
EPA, Region 9

EPA Region 9 Contacts:

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